നടത്തി പാസാക്കുന്നുണ്ട്. അക്കൂട്ടത്തിൽ ഈ തിനെക്കുറിച്ച് ആലോചിച്ചാൽ ഇതു ഇവിടെ പാസാക്കാമെന്നാണു് ഞാൻ വിചാരിക്കുന്നതു്. ഇതു ഒരു ശമ്പളമല്ല. അവർ ചെയ്യുന്ന വക്കിന്നു ഒരു ആണറി അലവൻസായിട്ടു മാത്രമെ ഇതു കണക്കാക്കേണ്ടതുള്ളു. ഇപ്പോൾ മുനിസിപ്പാലിറ്റിയിലെ ചെയർമാനു് 150 രൂ. മാസംപ്രതി അലവൻസായി കൊടുത്തുവരുന്നുണ്ടു്. അതു കിട്ടുമെന്നു വിചാരിച്ചിട്ടാണൊ ചെയർമാന്മാരാകുന്നതു്? അല്ല. അതിന്റെ റസ്പക്ടിനു വേണ്ടിയാണു് ഇങ്ങിനെ ശമ്പളം കൊടുത്തുപോരുന്നതു്. ഇതിനു കൂടുതലായ ഒരു പ്രസംഗത്തിന്റെ ആവശ്യമില്ല. ബില്ലിനെ ഞാൻ ബലമായി അനുകൂലിക്കുന്നു.

Motion put and carried, 23 for and 4 against

Mr. President: The House will now resume discussion on the motion of Mr. C. V. Iyyu that the Cochin Tenancy Act (Amendment) Bill be taken into consideration.

The Cochin Tenancy Act (Amendment) Bill*

മിസ്റ്റർ സി. വി. ഇയ്യു: സർ, സെലക്ട് കമ്മിറ്റി റിപ്പോർട്ടിൽതന്നെ മിച്ചവാരവും സക്കാർ നികുതിയും വെവ്വേറെയാണെന്നു പറഞ്ഞിരുന്നുവെങ്കിലും പുതിയ വകുപ്പിൽ പുതിയ വിവരണത്തിന്നു താഴെയുള്ള വകുപ്പുകൊണ്ടു കാണുന്നു. ചാത്തവകാശം എന്താണു് കാണുന്നതിന്റെ അഞ്ചു ശതമാനം വീതം ആക്കേണ്ടതാണെന്ന ഉദ്ദേശം ഇന്നത്തെ നിയമസഭക്കും ബിൽ നിർമ്മിച്ച കമ്മിറ്റിക്കും ഉണ്ടായിരുന്നുവെന്നു ആ ബില്ലിൽതന്നെ—ഫ്രഫസ്സൽ ഭേദഗതിചെയ്ത ബില്ലിൽതന്നെ—പല സ്ഥലങ്ങളിലും ഉള്ള വിവരണങ്ങൾകൊണ്ടു മനസ്സിലാകുന്നുണ്ടു്. പുതിയ വകുപ്പു് (ii) ഉപവകുപ്പിൽ—"the renewal fee, if any, levied and in case no such fee was levied, a statement to that effect" എന്നു തിരിച്ചു പറയുന്നുണ്ടു്. എന്നതന്നെയല്ല പുതിയ വകുപ്പു് (എ) (ബി) ഉപവകുപ്പുകളിൽ

(a) "all arrears of *michavaram* and *puravaka* dues accruing for a period not exceeding 12 years;

(b) all arrears of Government or local taxes and other dues which he was bound to pay but which were paid by the landlord irrespective of the time when they were paid"

എന്നു പറഞ്ഞിട്ടുള്ളതിൽനിന്നും മിച്ചവാരത്തിൽ സക്കാർനികുതി ഉൾപ്പെടുന്നതല്ലെന്നു നിയമകർത്താക്കൾക്കു് ഉദ്ദേശമുണ്ടായിരുന്നുവെന്നു തെളിയുന്നുണ്ടു്. മിച്ചവാരത്തിന്റെ വിവരണത്തിലുള്ള പിശകു് എങ്ങിനെയോ കടന്നുകൂടിയ ഒരു ചില്ലറ തെറ്റല്ലാതെ വേറെ യാതൊന്നുമല്ല. അതു എതു വിധത്തിലുള്ളതായാലും ഭേദഗതി ചെയ്യുന്നതു്യാവശ്യമായിരിക്കുന്നു. ഒടുവിലത്തെ വകുപ്പിൽ "Arrears of *pattam*, *michavaram*, renewal fee and other dues owing to the landlord as well as arrears of revenue or other

*Appendix

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dues....." എന്നു പറഞ്ഞാണ് വാചകം തുടങ്ങുന്നത്. അതുകൊണ്ട് മിച്ചവാരത്തിൽ സർക്കാർനികുതി ഉൾപ്പെടുന്നില്ലെന്നു വിശദമാക്കുന്നുണ്ട്. സർക്കാർനികുതി ഉൾപ്പെടുന്നതാണെങ്കിൽ സർക്കാർനികുതി തിരിച്ചു പറയുമായിരുന്നു. അതുകൊണ്ട് ഈ ഭേദഗതിയെ നിയമസഭ അംഗീകരിച്ചു പാസാക്കണമെന്നപേക്ഷിച്ചുകൊള്ളുന്നു.

Mr. T. P. Poulose *(Kanayannur):* I second it.

Mr. Puthur Achyuta Menon *(Kattur):* Sir, I have very great pleasure to support the amendment moved by Mr. C. V. Iyyu.

Till the decision in 6 Cochin Law Journal, 498, we were all under the impression that "*michavaram*", with any amount of explanation will not include "tax". It was in 1090 that the Tenancy Act was first passed and the definition of *michavaram* in that Act was as follows.— "*Michavaram*" means whatever is agreed to be paid to a landlord by a *kanam* tenant after deducting from the *pattam* the interest due on the *kanam*." According to the Act, the renewal fee was in all cases 27½ per cent in the case of *kanam* and 15 per cent in the case of *puramkadams*. But in 1113, when the new Tenancy Act was enacted, a different definition for the term "*michavaram*" was given and according to that definition, "*michavaram*" means the balance of money or produce or both accruing due periodically to the landlord after deducting from the *pattam* the interest due on the *kanam* amount and *puramkadam*, if any. In this connection it will be necessary to read the definition of *pattam* also. "*Pattam*" means the landlord's share as fixed by the contract of tenancy of the produce of the holding, whether in money or in kind or both, but does not include renewal fee. Sir, I bring this to the notice of the House, because last time there was a suggestion from the Treasury Bench that in the term "*pattam*" the only thing to be deducted is the interest of the *kanam* amount and that the tax also can very well go under that definition, and that it must have been the intention of the legislature to include tax also in that definition. In this connection, I would like to bring to the notice of this House that it was after the Settlement Proclamation of 1082, if I remember correct, that the *jenmi* was asked directly to pay the tax to the Sirkar. Before that time, the tenant used to pay the Sirkar tax. After the Settlement it was collected from the *jenmi* and the *jenmi* used to collect it from the tenant. So, it cannot be argued for a moment that at that time it was the custom or the practice that this tax also was included in the definition of "*pattam*".

Sir, there are very many sections in the Tenancy Act which will show that, it was never the intention of the legislature when

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they enacted the Act of 1113 to include tax also in *michavaram*. I refer to sections 27, 51 and 53 of the Act. Section 27 says what are the things to be paid at the time of the renewal of a *kanam* document. There it is stated, he must pay all arrears of *michavaram* and *puravaka* dues accruing for a period not exceeding 12 years and also all arrears of government or local taxes. So this will clearly show that it was not the intention of the legislature to include the Sirkar tax also in the definition of "*michavaram*". If *michavaram* will include tax, there will not be another provision for tax. Then there is one relief according to the last para of section 28. By virtue of the last para to section 28 we get the relief that if there is no *michavaram* payable or the *michavaram* payable is less than 12½ per cent of the *pattam*, he will have to pay a renewal fee of only 5 per cent of the *kanam* amount. "If there is no *michavaram* payable"—This expression Sir, is very important. If tax was deemed to be included in the term "*michavaram*", will there be any instance where there will be no *michavaram* payable to the *jenmi*? That shows the intention of the legislature was not to include tax in the definition of *michavaram*. If you go through sections 27, 51 and 53 of the new Tenancy Act, it will be abundantly clear that it was never the intention of the legislature to include Sirkar tax. The Select Committee had reason to enquire into the matter whether if tax is included in the term "*michavaram*" any relief will be got by the tenants in the case of *nilams*. The then Diwan Peishkar, our present Secretary to Government, admitted after verifying the necessary documents that especially in the case of *nilams* there will be no relief, because there, it will be always more than 12½ per cent. The Select Committee deeply went into the matter and found that if this tax is included in *michavaram*, in no case in the case of *nilams* this relief will be got. In 6 Cochin it was decided that when tax is to be paid directly to the *jenmi*, it will not come within the definition of *michavaram*. If not to the *jenmi*, their lordships did not come to a finding in that case. I ever thought there was an *obiter dicta* to the effect that when the tax is to be paid to the Sirkar also, it must be construed as not forming part of *michavaram*, for the tenant is fulfilling his obligations towards the *jenmi*. By the decision in 7 Cochin Law Journal 476, it has become certain that in all cases under the Tenancy Act of 1113, *michavaram* will not include tax. We cannot think this was the intention of the legislature when they passed the Tenancy Act in 1113, as is clear from it. It is high time that the legislature should interfere, if the last para to section 28 should be of any benefit to any tenant. On these grounds, I humbly beg to bring to the notice of the House that the intention of the legislature when they enacted the Act of 1113 may be made clear by accepting this amendment.

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Mr. T. P. Poulose *(Kanayannur):* Mr. President Sir, I support this Bill. The object of this Amendment Bill is to make it clear that the definition in Act, XV of 1113 of the term "*michavaram*" does not take within its meaning Sirkar tax payable by the tenant either directly to the Sirkar or to the landlord. The object of the amendment is not to get rid of the *kanam* tenant's liability to pay the Sirkar tax. We concede that the *kanam* tenant has to pay the Sirkar tax, either to the Sirkar directly or to the landlord. The object is only to make it clear that the term '*michavaram*' as defined in the Act does not take in Sirkar tax. This is how the term "*michavaram*" is defined in the Tenancy Act. "*Michavaram* means the balance of money or produce or both accruing due periodically to the landlord after deducting from the *pattam* the interest due on the *kanam* amount and *puramkadam*, if any". The question arose whether this definition takes along with it the Sirkar tax which the tenant has to pay. The High Court interpreting this definition, held that the term "*michavaram*" takes within its meaning Sirkar tax also.

For understanding the necessity of the proposed amendment, it will be necessary to bear in our minds the nature of the *kanam* tenure. In a *kanam* demise the tenant pays to the landlord an initial lump sum consideration called the *kanam* amount and interest is fixed on this lump sum. This interest is deducted from the *pattam* or rent. The *pattam* minus interest on the *kanam* amount is the *michavaram* that the tenant has to pay the land-lord every year. Over and above this liability to pay *michavaram*, the tenant has also to pay the tax due to the Sirkar. If the *kanam* amount is proportionately increased the interest also will proportionately increase and consequently *michavaram* will be reduced. In other words, *michavaram* will be reduced in inverse proportion to the *kanam* amount.

According to section 28 of the Tenancy Act, the *kanam* tenant has to pay 27½ per cent of the *kanam* amount as renewal fee at the end of every twelve years. In cases where the *kanam* amount is large enough to reduce the *michavaram* to nothing or to less than 12½ per cent of the *pattam*, the last paragraph, of section 28 provides that the *kanam* tenant need pay only 5 per cent of the *kanam* amount as renewal fees. Cases, where *michavaram* is reduced to nothing or to less than 12½ per cent of the *pattam*, will be cases where the *kanam* amount is equal to or almost equal to the value of the property. The interest on the amount paid is so large that it consumes the entire or almost the entire *pattam* or rent. In such cases to ask the *kanam* tenant to pay 27½ per cent of the *kanam*

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amount, which is equal to the value of the property, every 12 years will be hard on the tenant. Therefore, the last paragraph of section 28 provides that in such cases 5 per cent only of the *kanam* amount need be paid as renewal fee. If *michavaram* is taken to include tax also, in no case will the tenant be able to get the benefit of the last paragraph of section 28, because the Sirkar tax alone will be always more than 12½ per cent of the *pattam*. According to the Settlement Proclamation, Sirkar tax is one-fourth or 25 per cent of the settlement *pattam*. Even giving allowance for slight variations between the *pattam* fixed by the settlement and the *pattam* fixed in the *kanam* document, it is clear that tax will be more than 12½ per cent of the *pattam* fixed in the *kanam* document. So, if tax is also taken to be included within the definition of *michavaram*, *michavaram* will be actual *michavaram* plus the Sirkar tax. In that view in all cases *michavaram* will be more than 12½ per cent of the *pattam*. There is a certain class of *kanam* called *Nerkanam* in which there is no *michavaram* to be paid to the landlord. The *kanam* amount is so large that the interest accruing on that *kanam* amount will be equal to the *pattam* of the property and no balance will be left by way of *michavaram* for payment to the land-lord. Even in such cases, the tax will be more than 12½ per cent of the *pattam*. If *michavaram* includes Sirkar tax also, even a *Nerkanam* tenant, who has paid a sufficiently large *kanam* amount that will yield an interest equal to the *pattam*, will have to pay 27½ per cent of the *kanam* amount which represents almost the entire value of the property as renewal fee every 12 years. It is to remove such hardships and difficulties that the last paragraph of section 28 has been enacted. This is what it says: "Nothing in this section shall make the *kanam* tenant liable to pay as renewal fee anything more than 5 per cent of the *kanam* amount and *puramkadam*, if any, when there is no *michavaram* payable under the *kanam* to be renewed, or it is less than 12½ per cent of the *pattam* fixed therein". The view that Sirkar tax is included in *michavaram* has rendered the last para of section 28 completely nugatory.

But Sir, if the only reason was that of hard-ship in the application of section 28, I would not have supported any proposal for amending the definition of *michavaram*. If the definition of *michavaram* as it now stands in the Act works hardship in the operation of section 28, that will not be justification for amending the definition of *michavaram* but will be justification for incorporating proper amendments in section 28. But I would submit that this is not the only reason why I say, the definition of *michavaram* should be amended. "*Michavaram*" as it was always understood in this State, and I believe throughout Malabar, was never taken to include Sirkar tax. The yield from the land had

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3 sharers—a portion went to Sirkar by way of tax, a portion to the landlord and a portion to the tenant. The *pattam* was fixed after deducting the tax. I am speaking only with reference to *kanam* property. This does not apply to the *verumpattam* property. The *kanapattam* was fixed after deducting the Sirkar tax. *Kanapattam* fixed in the document does not ordinarily take in the tax payable to the Sirkar. Out of the yield from the land a portion was to be paid to the landlord, a portion was treated as tenant's share and out of the portion due to the landlord the interest on the *kanam* amount was deducted and the balance was to be paid as *michavaram* to the landlord. The tax was paid out of the tenant's share. I am supported in this by the report of the Tenancy Commission which was appointed in 1086 or thereabout and which was presided over by the then Chief Justice of this State. Paragraph 8 of the report says: "The theory in regard to the assessment of rent on *kanam* holdings is that the net produce after deducting the cost of seed and cultivation should be shared equally between the landlord and the tenant. From the share of the former (landlord) is deducted the interest on the *kanam* amount and only the balance which is known as *michavaram* is actually payable to him. The assessment due to Government is on the other hand payable from the tenant's share." If Sirkar tax is payable from the tenant's share as stated in this report how can you say that it forms part of *michavaram*? Tax is from the tenant's share and *michavaram* is part of the landlord's share of the produce. More than that, Sir, as pointed out by Mr. Achyuta Menon, the definition of *michavaram* in the Tenancy Act of 1090, did not include tax within its meaning.

Mr. President: In fairness to the landlord, at the time of the renewal, should not account be taken of the actual value of the property in the possession of the *kanam* tenant?

Mr. T. P. Poulose *(Kanayannur):* There is provision in the Tenancy Act by which, in cases where the yield has increased or the area has increased, *pattam* may be enhanced. The renewal fee is meant to be periodically paid to the landlord as consideration for the renewal that he gives the tenant. A landlord, before the coming into force of the Tenancy Act of 1090, was entitled to evict the *kanam* tenant at the end of 12 years. The tenants instead of getting themselves evicted got renewals of the demise on payment of renewal fee. The renewal fee is the remuneration for such renewal. Before the Tenancy Act the payment and acceptance of renewal fee were on a voluntary basis. No landlord was bound to grant renewal and no tenant was bound to pay renewal fee. The Tenancy Act provided that no *kanam* tenant should be evicted by the landlord and that the

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tenant should pay renewal fee at the end of every 12 years to the landlord. It had also to be fixed what the rate of renewal fee should be. The basis of fixing the amount of renewal fee is the *kanam* amount which the tenant had paid. As an ordinary rule, it has been provided that the renewal fee should be 27½ per cent of the *kanam* amount. That does not work hardship in ordinary cases. But there are exceptional cases where the tenants have paid proportionately large sums as *kanam* amounts, in some cases amounting almost to the value of the property. In such cases, if the 27½ per cent rule is applied, what the tenant will be compelled to pay will be 27½ per cent of the entire value of the property for the grant of a renewal. The last paragraph of section 28 provides that in such cases where there is no *michavaram* or where the *michavaram* is reduced by the interest on the *kanam* amount to less than 12½ per cent of the *pattam*, the *tenant* need pay only 5 per cent of the *kanam* amount as renewal fee. This will not work any hardship on the landlord, because in cases where the *michavaram* is reduced to nothing, the *kanam* amount with the landlord will be very large. Five per cent of this large *kanam* amount will be as much as or more than the 27½ per cent in other cases. Suppose of two properties of the same extent and yielding the same amount of *pattam*, say, Rs. 100, one *tenant* pays a *kanam* amount of Rs. 1,500 in respect of one property. This will yield an interest of Rs. 90. The *michavaram* that he has to pay will be only Rs. 10. If he has to pay 27½ per cent of the *kanam* amount as renewal fee he will have to pay Rs. 400 and odd at the end of every twelve years. In respect of the other property which is exactly similar, suppose another *tenant* has paid only Rs. 200 as *kanam* amount. The interest on the *kanam* amount will be Rs. 18 and this *tenant* will have to pay to the landlord a *michavaram* of Rs. 82, and the renewal fees he has to pay will be only Rs. 55 at the rate of 27½ per cent of the *kanam* amount. It will be clear from the foregoing illustration that, as the former *tenant* has paid a larger *kanam* amount, he is penalised by being asked to pay a renewal fee of Rs. 400 and odd while the latter has only to pay Rs. 55, although the advantages derived by both the *tenants* from their respective holdings are the same. It is to get rid of this anomaly and hardship that the last paragraph of section 28 has been enacted.

Mr. President: Is there any statutory limit to the *kanam* amount?

Mr. T. P. Poulose *(Kanayannur):* No.

Mr. President: The whole argument presumes that the interest that the *kanamdar* charges is an equitable interest.

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Mr. T. P. Poulose *(Kanayannur):* *Kanams* are not created now. The provisions about irredeemability and renewal fee apply only to old *kanams*. When the old *kanam* deeds were executed, interest was charged according to customary rates. There was no statute law. In the absence of any statute law, the rate of interest which was generally prevailing was adopted by the *tenants* and land-lords. We are not dealing with new *kanams*. Compulsory renewals and renewal fees obtain only in respect of *kanams* created prior to 1090. The *kanamdar* cannot now ask for an enhancement of interest. There is no provision in the new Act whereby interest can either be reduced or enhanced. In the old Act of 1090, there was a provision for reducing interest to the advantage of the land-lord, but no provision for enhancing it.

Mr. K. Achyuta Menon *(Secretary to Government):* You cannot say that invariably the amount of *michavaram* is due to certain causes. In the same locality, the result of the *michavaram* may be due to differences in the rate of interest.

Mr. T. P. Poulose *(Kanayannur):* I appreciate the point. In olden days, when these documents were executed in different localities slightly different rates of interest might have prevailed. But the rates of each locality were accepted in the documents. Though there was no statutory provision fixing any particular rate of interest, the customary rates which were considered to be fair were accepted in the documents by the land-lord and the *tenant*.

Mr. K. Kochukunhan Kaimal *(Vadakkancheri):* As in the case of interest, there will be difference in the rate of *pattam* also. *Pattam* was not uniform in all cases.

Mr. T. P. Poulose *(Kanayannur):* The last paragraph of section 28 definitely lays down that only 5 per cent of the *kanam* amount need be paid as renewal fee in cases where there is no *michavaram* or where it is less than 12½ per cent of the *pattam*. Now, we are not on the question whether the last paragraph of section 28 is justified or not. The last paragraph makes a distinction where the *kanam* amount is large and the *michavaram* is reduced to nothing or almost to nothing. That distinction is already there. The principle I have tried to explain is already accepted by section 28. We are only seeking to understand and make clear the meaning of the term *michavaram* in that section.

Now, leaving this aspect of the argument, I will deal with one or two other aspects also. The difference between the definition of *michavaram* in the old Act and that in the new Act is apparently very slight, though it has caused so much of mischief. This is how

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the old Act defines the term *michavaram*: "*Michavaram* means whatever is agreed to be paid to a landlord by a *kanam tenant* after deducting from the *pattam* the interest due on the *kanam*." In the new Act it is defined thus: "*Michavaram* means the balance of money or produce or both accruing due periodically to the landlord after deducting from the *pattam* the interest due on the *kanam* amount and *puramkadam* if any." The definition in the old Act contained the words "agreed to be paid to a landlord", and the High Court said that definition does not take in tax. I am referring to a decision in 20 Cochin. When the definition was changed in the new Act *mischavaram* became the balance of money or produce or both accruing due periodically to the landlord, and the High Court has ruled that *michavram* includes tax also. We have to consider whether in framing this new definition there was any intention on the part of the Legislature to bring tax also within the meaning of the term "*michavaram*". I went through the proceedings of that meeting in which this Act was passed. This clause was simply moved and passed. There was no discussion. More than that, I shall show sufficient internal evidence in the present Act itself to prove that the word *michavaram* is used therein in the operative section as not including Sirkar tax. For example, take section 27. It says: "The following amounts shall be payable by the *kanam tenant* at the time of renewal.—(*a*) All arrears of *mischavaram* and *puravaka* dues accruing for a period not exceeding twelve years; (*b*) all arrears of Government or local taxes and other dues." Now, if the word *michavaram* in clause (*a*) took in Government tax, why should Government tax be specifically provided for in clause (*b*)? That shows that at least when section 27 was passed, there was no intention to include tax within the meaning of *michavaram*. Otherwise, after mentioning *michavaram* in clause (*a*) there was no necessity for mentioning 'government tax' in clause (*b*).

Mr. P. Govinda Menon *(Mulakunnathukavu)*: Is it the contention of the hon'ble member then that the decision of the High Court is wrong?

Mr. T. P. Poulose *(Kanayannur)*: I am not here to sit in judgment on the High Court decision.

Mr. P. Govinda Menon *(Mulakunnathukavu)*: You say that the decision of the High Court in 7 Cochin is inconsistent with the letter in the Act and the intention of the legislature?

Mr. T. P. Poulose *(Kanayannur)*: I say it is inconsistent with the intention of the legislature. The legislature might have failed to say what it intended. Now, we are here to set it right. The

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High Court is not bound to give effect to any unexpressed intention of the legislature. The High Court interprets the law as the legislature has framed it. My point here is this. The definition is wrongly worded. We had no intention at the time we passed the Act to give a different meaning to "*michavaram*" than what was understood by that term under the old Act and under customary law.

Mr. P. Govinda Menon *(Mulakunnathukavu):* If it is only the intention of the hon'ble member to have an alteration in the existing law, we need not labour on the point whether the High Court's interpretation of the law is correct or not.

Mr. T. P. Poulose *(Kanayannur):* I am only explaining the necessity of altering the law. I am not saying that the High Court decision is wrong. As there is a variation in the definition in the new Act, the High Court interpreted it according to its letter. The question is whether we really intended that meaning when we enacted the Act. The definition gave the word "*michavaram*" a meaning different from the one in which it is used throughout the Act.

In section 51 it is stated: "In the absence of a contract to the contrary, the *kanam* tenant shall be liable as between himself and the landlord to pay all Government and local taxes...." If in a *kanam* document, there is no provision as to who should pay the tax, and if the ordinary rule is that the tax should proceed from the landlord's share, the provision should have been that in the absence of a contract to the contrary, the landlords should pay the tax. On the other hand, the provision here is that in the absence of a contract to the contrary, the tenant should pay the tax.

Mr. K. Achyuta Menon *(Secretary to Government):* Who will get the benefit of the remission?

Mr. T. P. Poulose *(Kanayannur):* We are not concerned with that. The answer to such questions should be deduced from the solution of the main question before us. The question is, if in the absence of a contract to the contrary, the tenant is to be made liable to pay the Sirkar tax, from whose share of the produce the tax should come, whether it comes from the tenant's share or from the landlord's share. If it comes from the tenant's share, it does not form part of *michavaram*. This is exactly what I read from the Tenancy Commission report of 1086. There also they say that the tax should be paid from the tenant's share. The produce of the land is divided into half and half. From the landlord's share, the interest on the *kanam* amount is deducted and the balance

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known as *michavaram* is to be paid to the landlord. From the tenant's share he has to pay the Sirkar tax. It is only on this assumption that section 51 can be justified.

Again, Sir, in section 28 itself there is sufficient indication to show that the legislature did not intend that the term *michavaram* should include tax. Section 28 contemplates cases where there is no *michavaram*. I ask whether there will be a single demise where there is no *michavaram*, if *michavaram* takes in tax also.

Mr. P. Govinda Menon *(Mulakunnathukavu):* If there is a contract to the contrary?

Mr. T. P. Poulose *(Kanayannur):* I ask the hon'ble member whether in the course of his long experience in his professional career, or in any other capacity, he has come across a single document by which the landlord parts with property on *kanam* to the tenant, under which nothing is paid to the landlord and the landlord continues to pay the tax. If there is such a case in this State, then, I submit there is a possibility of applying the last paragraph of section 28. Otherwise, this last paragraph of section 28 cannot find a single instance to which it can be applied and it will be an absolutely nugatory provision.

Simply because section 28 would otherwise be nugatory, I would not be advocating that the definition of *michavaram* should be amended. I submit to the House that the definition which is sought to be given by the proposed amendment is a definition which is consistent with our customary law, and with our notions of what *michavaram* is and with the definition in the old Tenancy Act. I submit that the inadvertant variation in the wording of the definition of "*michavaram*" in the new Act was never intendend to bring about troubles it has brought. Unfortunately, it so happend and it is our duty to rectify that. I am sure the Hon'ble Secretary to the Government and the Advocate-General will re-consider the position they have taken. I am sure that both of them with their vast experience in respect of these matters will agree with me in their individual capacity that the position that I have raised is substantially correct. I appeal also to the Diwan Peishkar.

The House rose for lunch at 1-20p.m. and reassembled at 3p.m. with Mr. P. Govinda Menon (Panel Chairman) in the Chair.

*മിസ്റ്റർ സി. എൻ. ഇട്ടിരവി നമ്പൂതിരി: സർ, ഞാൻ ഈ ബില്ലിനെ അനുകൂലിക്കുന്നു. ഈ ബിൽ പൊളിച്ചെഴുത്തവകാശത്തിന്മേൽ തിരുവാരം അക്രമമായിട്ട് പിരിക്കുന്നതിനെ നിയന്ത്രിക്കുവാനുള്ള ഒരു ഭേദഗതിയായിട്ടാണ് ഇവിടെ അവതരിപ്പിച്ചിരിക്കുന്നതു്. അക്രമമായിട്ട് പിരിക്കുന്ന

*Speech not corrected by the hon'ble member.

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തിനെ നിയന്ത്രിക്കേണ്ടതു് എത്രയും ആവശ്യമായിട്ടുള്ളതാണു്. ഫ ക കൊ ല്ലമായാൽ പൊളിച്ചെഴുതണമെന്നുള്ള രീതിതന്നെ അക്രമമായിട്ടുള്ളതാണു്. ഒരാൾക്കു കുറെ കടം കൊടുത്തിട്ടുണ്ടെങ്കിൽ ഫ ക കൊല്ലം കഴിഞ്ഞു് പിന്നെയും കുറെക്കൂടി കൊടുക്കേണ്ടതായിട്ടാണു് വരുന്നതു്. ഇങ്ങോട്ടു വാങ്ങുന്നതിനു പകരം അങ്ങോട്ടു കൊടുക്കേണ്ടിവരുന്നുണ്ടു്. അതിനെ നിയന്ത്രിക്കേണ്ടതു് അത്യാവശ്യംതന്നെയാണു്. ഫ ൽ ശതമാനമെന്നുള്ളതു് ദ്വിശതമാനമാക്കണമെന്നാണു പറയുന്നതു്. പൊളിച്ചെഴുത്തവകാശം തീരെ ഇല്ലാതാക്കിയാൽ ഇതിനൊന്നിനും ഒരാവശ്യവുമില്ല. കാണത്തം സംബന്ധിച്ചു നോക്കുകയാണെങ്കിൽ മിക്ക കാണാവകാശങ്ങളും ഇപ്പോൾതന്നെ ശവപ്പെട്ടിന്റെ കീഴിലാണിരിക്കുന്നതു്. അതുകൊണ്ടു് ഈ ബിൽ ഇങ്ങിനെതന്നെ പാസാക്കുവാൻ പാടില്ല. വസ്തുക്കൾ കാണം ചാർത്തുന്ന കാലത്തു് എന്താണ പാട്ടം നിശ്ചയിക്കുന്നതു് ആ പാട്ടം മാത്രമേ പൊളിച്ചെഴുത്തുമ്പോഴും കാണിക്കുവാൻ പാടുള്ളു. പൊളിച്ചെഴുത്തവകാശം വേണ്ടെന്നു പറഞ്ഞാൽ അതിനെപ്പറ്റി ആവലാതി പറയുന്ന ആളുകൾ ആരും ഉണ്ടാകുമെന്നു തോന്നുന്നില്ല. മുതലാളിമാരുടെ കാര്യത്തിൽ ഇങ്ങിനെയുള്ള യാതൊരു വ്യവസ്ഥകളും ചെയ്യേണ്ട ആവശ്യമില്ല. അതുകൊണ്ടു് ഈ ബില്ലിൽ അങ്ങിനെയുള്ള ഒരു വ്യവസ്ഥകൂടി ചേർക്കേണ്ടതാണെന്നാണു് എന്റെ അഭിപ്രായം.

Mr. A. V. Moothedan *(Chalakkudi):* Sir, I wish to make a few observations. Section 28 of the new Tenancy Act was enacted with a view to give relief in those cases of *kamam* tenants where the *kanam* amounts are very high. Now, by the High Court decision, it appears that the wording is not clear. We are not here to sit in judgment over the High Court decision. *Michavaram* does not include tax. That was our intention. We want to make it very clear, without any ambiguity. For that purpose we need not go into High Court decisions. This is a very clear issue. What was our intention? We wanted to give relief to all those cases of *kanam* tenants where the *kanam* amounts are very high. As it is, section 28 is inoperative, and meaningless. So, we must make our intention very clear. We need not go into all those antiquated questions of "*kanam*", "*michavaram*" and all that. I request the House to pass this Bill unanimously. I wonder why Government should oppose this.

Mr. M. K. Devassy *(Adur):* How do you know that?

Mr. A. V. Moothedan *(Chalakkudi):* The dissenting minute of Mr. Achyuta Menon is very strongly worded.

Mr. K. Achyuta Menon *(Secretary to Government):* Mr. President, Sir, At the outset I must make one thing clear. The statement of objects and reasons of this amending Bill shows very clearly what the object of the amendment is, and except for that object, there is no other point served by this amendment. Supposing section 28 had not been there. Then, it does not matter for the purpose of any other section whether *michavaram* includes tax or

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excludes it. So far as I can see from the existing Tenancy Act, even if the Judges have rightly or wrongly held that *michavaram* includes tax, from the standpoint of either the tenant or the landlord, no result follows from the acceptance of this amendment except with reference to a specific section, *viz.*, section 28. And the argument was also confined to this. It was not pointed out even if the decision stood, the interests of either the landlord or the tenant would be in jeopardy because of this expression, except so far as section 28 was concerned. We must make the point clear.

Mr. T. P. Poulose *(Kanayannur):* In other sections also.

Mr. K. Achyuta Menon *(Secretary to Government):* That was the argument. But you did not point out any other instance. Suppose the decision stood and there was no provision as to renewal fees. There is no point in the amendment.

Mr. T. P. Poulose *(Kanayannur):* There will be other cases of hardships also.

Mr. K. Achyuta Menon *(Secretary to Government):* Let us not jump from issue to issue. The argument so far did not advert to any one case where this decision will work hardship except with reference to section 28.

Mr. T. P. Poulose *(Kanayannur):* If I am permitted by the Chair, I shall point out other instances.

Mr. K. Achyuta Menon *(Secretary to Government):* You will have to rise up again and again, if you are going to meet every point I raise.

Mr. T. P. Poulose *(Kanayannur):* If the Hon'ble Secretary objects to my pointing out any other instance of hardship, I do not want to do so.

Mr. K. Achyuta Menon *(Secretary to Government):* I do not object. But I am simply stating the consequence.

Panel Chairman: You may state your case.

Mr. T. P. Poulose *(Kanayannur):* There may be cases in which the *kanam* document provides that a particular quantity of paddy be set apart for payment of tax. A specific case like that arose in 20 Cochin. In that case a specific quantity of paddy was set apart to the tenant's share for the payment of Sirkar tax. At the time of renewal, the landlord claimed that the particular quantity of paddy which was so set apart for the payment of tax must be added to the *michavaram* and that the landlord would undertake to pay the tax. At the time, the original *kanam* document was written, the price of paddy was very low. At the time of the renewal, the price of paddy became double or treble. The High Court ruled that the

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acceptance of the landlord's claim will amount virtually to an enhancement of *michavaram* and that *michavaram* is something that is exclusive of tax. Therefore, the High Court rejected the claim that the quantity of paddy set apart for the payment of tax should be treated as *michavaram* or added on to *michavaram*. This case arose under the old Act. Such a case might be differently decided under the new Act. This is another instance where difficulty would arise, if the definition of *michavaram* in the new Act is not amended. I only point out another instance. This does not mean that I exhaust all the possible instances of difficulties.

Panel Chairman: In view of the provision in the new Act that the tenant has to pay the tax, will this difficulty still arise?

Mr. T. P. Poulose *(Kanayannur):* This difficulty will arise in spite of that. The landlord may be able to insist that a re-valuation of the price of paddy must be made and that 50 *paras* of paddy which was set apart originally for the payment of tax must be reduced to 20 *paras*, and to claim that the balance of 30 *paras* may be added on to *michavaram*. That would revolutionise the law which existed at the time the new Act was passed.

Mr. K. Achyuta Menon *(Secretary to Government):* I am much obliged to the hon'ble member. This furnishes me with another argument or two arguments in support of the position which I intended to take. One is that there are cases of document where the tax has been treated as part of *michavaram*.

Mr. T. P. Poulose *(Kanayannur):* I did not say that.

Mr. K. Achyuta Menon *(Secretary to Government):* Let us analyse the argument. What is said was that he is aware of a case in which the landlord demanded 50 paras of paddy in lieu of the tax, out of *pattam*.

Mr. T. P. Poulose *(Kanayannur):* I did not say, out of *pattam*. I said, out of the yield of the land which consists of the tenant's share and the landlord's share.

Mr. K. Achyuta Menon *(Secretary to Government):* The kinds of *pattam* for the purpose of the Act are two. One is what is known as *kanapattam* and the other *verumpattam*. We can ignore the yield for all purposes. We have either to go by the *verumpattam* or the *kanapattam*. Whatever that be, where the landlord has asked the tenant to pay a specified quantity of paddy for purposes of land tax, that direction to pay a specific quantity of paddy on his behalf, can happen only if the landlord is initially liable to pay the tax. The landlord throws that liability on to the tenant. If the two parties contracted on the assumption that the tenant is the primary person

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liable to pay the tax, then there would have been no direction by the landlord and an acceptance by the tenant in the document that he will pay a certain quantity of paddy which represents tax on behalf of the person primarily liable to pay. When *A* contracted with *B* and *B* directs *A* to pay 10 paras of paddy on his behalf then both *A* and *B* accepts that the initial liability to pay the tax is with *B*. Having set apart in the document a specified quantity of paddy for the purpose of tax, he said at the time of renewal that there should be a corresponding enhancement for certain reasons and the court negatived it. The first argument was that there are a large number of cases where this tax is directed to be paid in cash or its equivalent in paddy by the landlord under the document. I will make use of this argument for the purpose of another document. On the immediate question, the hon'ble member himself said that the High Court has held that that claim will be negatived.

Mr. T. P. Poulose *(Kanayannur):* That was under the old Act.

Mr. K. Achyuta Menon *(Secretary to Government):* Then, under the accepted state of things and the accepted state of law, a reference was unnecessary. So the only question is whether under the Act there is any apprehension of danger to the interests of either the tenant or the landlord except with reference to section 28.

Mr. T. P. Poulose *(Kanayannur):* Under the old Act, there was no ground for apprehension, but under the new Act, there is ground for apprehension. That is my case.

Mr. K. Achyuta Menon *(Secretary to Government):* The point simply is this. Is there any other section in the new Act except section 28 which results in the apprehension that the interests of the landlord or the tenants will be affected? I wait for an answer. That is why I stated the statement of objects and reasons confines its attention to section 28 alone. It is those only for the purpose of this renewal fees, and for no other purpose at all. To that extent I am correct. The objects and reasons say: "The relief from the heavy burden of renewal fees granted to *kanam* tenants who have paid to the landlord a high rate of *kanam* and *puramkadam* as contemplated in para 2 of explanation (2) of section 28 of the Cochin Tenancy Act is not enjoyed by the *kanam* tenant", because the High court has interpreted the definition of the word '*michavaram*' in its literal sense. So that we are back again on the question as to its resultant effect upon section 28. There, it is not enough to show when you seek an amendment that the legislature might have intended something else, but there must be specific indications that the legislature was not aware of it.

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Mr. A. V. Moothedan *(Chalakkudi):* We can do it now.

Mr. K. Achyuta Menon *(Secretary to Government):* Upon the merits of the question, the next argument will come. When the argument is based upon the supposed intention of the legislature, you cannot spell out its intentions except by the words it used.

Mr. T. P. Poulose *(Kanayannur):* The rule binding the Courts need not bind us.

Mr. K. Achyuta Menon *(Secretary to Government):* Whatever binds the court which is accustomed to deal judicial matters must also bind people using judicial arguments based upon a study of law. There cannot be one rule for judicial officers and another rule for non-judicial people.

Mr. A. V. Moothedan *(Chalakkudi):* We are making laws here.

Mr. K. Achyuta Menon *(Secretary to Government):* I quite appreciate that argument. But there was an argument advanced here that even from particular sections of the statute, we can find out the intention that the intention of the legislature even in the existing statute was that *michavaram* should exclude tax. I do not agree. Reference was made to certain sections with regard to the payment of certain dues at the time of renewal. That I suppose is in my favour. I had explained it once before. Where you give arrears of *michavaram* and arrears of tax at the time of renewal to the landlord, I suppose, the initital liability to pay the tax is on the landlord. That is axiomatic. If anybody had to be paid the arrears, then the question will arise as to who has got the initial liability to pay. If the landlord has paid the tax, it is because he was the man primarily liable to pay. The question won't arise if the tenant has already paid. Only when he has not paid, that that section comes into play. The section also contemplates cases where the tenant has not fulfilled his obligations of paying the tax on behalf of the landlord. That is the interpretation. Now we go back to the other point whether there is anything right or wrong upon the merits of the question, leave alone the intentions of the legislature. I say that the legislature has made a deliberate departure from the Act of 1090. Why was it made? Either by mistake or deliberately. Partly out of mistake and partly out of deliberation is a contingency that would not arise. You cannot say that the framers of the later Act forgot to exclude the tax from the definition of *michavaram*. Therefore, it must be deliberate, and if deliberate, why? If upon the section, as it now stands, an interpretation has been put by the High Court, then that was a deliberate change made by the legislature.

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Therefore, leave aside the question of intention; the intention is one that has been expressed in the statute and expressed deliberately.

Now, we come back on the merits of the claim and when the merits are discussed, we cannot rely upon the intentions. Everything must be wiped off. On merits, it will be open to me to oppose the amendment, because it is not correct in principle to go in for this amendment. That is my third argument. When we are upon the question of amendments, it is open to anybody, when we are upon first principles, upon the merits of a thing, to argue that this ought not to be the amendment. I may say that this is not the amendment that ought to be made. A reference to the British Act will show that these *nerkanams* and tenures of this kind have been deliberately placed out of the purview of that legislation. This renewal section there will not apply to them. They thought over this question and came to the conclusion that there is great injustice involved in limiting the renewal fee to 2½ or 5% on these high *kanams*. The jenmi has received a large amount and when it comes to the time of renewal, if you say, you cannot evict and that you shall be content with one and one-fourth or 2 per cent of the *kanam* amount, then it is very hard indeed. They, therefore, took them out of the category of other *kanams*. That is an understandable position of things. But that is not the amendment here. Why not you give the jenmi an option to give back the *kanam* amount if he so wills. The amendment is: "We are enjoying a high rate of interest. We must go on enjoying that. At the end of 12 years, we will pay you only 2½ per cent of the *kanam* amount. You must be rest content with that". Therefore in Malabar, they went upon a perfectly reasonable ground. They took the value of the property and fixed the renewal upon the percentage of the profit which could normally be supposed to have been enjoyed by the tenant, regard being had to the rate of interest and such other things. The renewal fee of a property should be based upon its benefit to the tenant. That is not the invitation here. The invitation here is, leave alone all these facts, cut down the *kanam* amount to 2½ per cent. The Diwan President put a very pertinent question.

Mr. T. P. Poulose *(Kanayannur):* That is an argument against the last part of section 28.

Mr. K. Achyuta Menon *(Secretary to Government):* I am willing to concede even that. When you are seeking to take out a section, why should you rely upon that section. We are here upon first principles. You are trying to amend the definition of *michavaram* for a particular object, that is to say, with regard to renewal fees payable to the landlord. Then eliminate the section altogether,

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If your definition is that *michavaram* does not include tax, then, what ought to be the renewal fees? There you want the section to stand. Half of it should stand so that the 5% should be there. That is your position. The section should not be so interpreted that *michavaram* should include tax. But the section should stand. There is no difficulty in understanding that position. There should be no difficulty in understanding our position also, that when it comes to an amendment, the amendment should be justified on first principles. Your argument is that the definition of *michavaram* whether it includes tax or does not include tax is necessary only with respect to its operation upon section 28.

Mr. Puthur Achyuta Menon *(Kattur):* There is no amendment to section 28.

Mr. K. Achyuta Menon *(Secretary to Government):* It is for that purpose. The objects and reasons clearly show it. The amendment may be with respect to the definition of *michavaram*, but the mover of the Bill is perfectly clear that the amendment will have effect only so far as section 28 is concerned. His idea is that section 28 must not be affected by the decision of the High Court. Section 28 must have its intended operation. That is all his object. Concentrating upon his object, I argued that the High Court's view is the correct view, and that the result which he wanted to give by his amendment is not the correct result from an appropriate appreciation of the merits of the case and by a comparison with the other statute laws on the subject. Even on the matter as to whether this tax by itself will be 12½ per cent of the *pattam*, the argument is that the amendment affects *parambas* also, and in the case of *parambas*, it cannot be said that the land-tax by itself is more than 12½ per cent *pattam*. It will also not be correct in the case of *parambas* plus *nilams*. It can be correct only in the case of tax-paying *nilams*. It can never be correct in the case of tax-free *nilams*. It can never be correct in the case of sub-*kanams*.

Mr. T. P. Poulose *(Kanayannur):* There cannot be *kanams* in respect of inalienable lands. Government can resume the title and make it *pandaravaka*.

Mr. K. Achyuta Menon *(Secretary to Government):* Government may. I have come across numerous instances of *adima* tenures being demised as sub-*kanams*. Its resultant effect is another matter. But as between the parties they will be governed by the regulation of the Tenancy Act. Whether the Sirkar will come in or not depends upon its sweet will and pleasure. Suppose the Sirkar does not come in.

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Mr. T. P. Poulose *(Kanayannur):* That contingency will never arise.

Mr. K. Achyuta Menon *(Secretary to Government):* It has arisen.

Mr. T. P. Poulose *(Kanayannur):* Do you mean to say that this section contemplates cases where the Sirkar omits to enforce its rights?

Mr. K. Achyuta Menon *(Secretary to Government):* Did I say that? Do you mean to say that there has been no instance whatever of an inam land being demised on *kanam*?

I thought you understood my argument. I was arguing upon a hypothetical case. Suppose an *inam* land or an *adima* land has been demised on *kanam* for 12 years and suppose between the parties a renewal is effected. What is the section that should come into play? The question as to whether the Sirkar has come in or not is a question of fact. I deny that there is no such case. There are cases where the Sirkar has not been aware of alienations for a long time.

Mr. Puthur Achyuta Menon *(Kattur):* The Government Secretary is imagining a case. There is section 28. The only thing that is pointed out is that when the *inam* lands are leased on *kanam* tenure Government will be able to interfere. But there remains the fact that when *inam* lands are leased on *kanam* tenure they will be treated as *verumpattam* by Government. That is a question of law. The framers of the Act would not have omitted that.

Mr. K. Achyuta Menon *(Secretary to Government):* When I ask what is the provision of law in such a case, it is no argument to say that there will be no such cases. There have been such cases.

Mr. T. P. Poulose *(Kanayannur):* There cannot be such cases of lands that were contemplated by the last para of section 28.

Mr. K. Achyuta Menon *(Secretary to Government):* I am here upon the question of amendment. I am saying if the amendment is brought in, what will be the effect. If the mortgage is granted to the member of the family, there may be no alienation provided it is to one of the *kanamdars* in his private capacity. I pointed out that there are first the *parambas*, then the holdings on *parambas* and then *nilams*. There may be several cases also. I take the case of the tax-free lands. The amendment is not so innocuous as it is. That being so we are constrained to oppose it. There is nothing which prevented the mover from framing the amendment regarding renewal fees as in the British Act. When we

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are here upon the question of what is the proper renewal fee, our attention is drawn to a portion of a section which is sought to be cut into two for the purpose of definition of *michavaram* and tax. Government feel that the effect of this will be to operate, as a hardship not only to *parambas*, holdings on *parambas*, specified kinds of *nilams* and certain cases of tax-paying lands where the interest is unusually high. You say there are imaginary things. Imagination is a very valuable quality.

Mr. T. P. Poulose *(Kanayannur):* You have plenty of imagination for many of these things. I complement you for that.

Mr. K. Achyuta Menon *(Secretary to Government):* The amendment may affect kanams with high rate of interest. It also operates upon certain kinds of lands. The legislature made a deliberate departure from the Act of 1109. Unless it is very clearly proved that there is necessity for a change, Government cannot accept the amendment.

മിസ്റ്റർ സി. വി. ഇയ്യു: സർ, ബഹുമാനപ്പെട്ട ഗവൺമെന്റ് സിക്രട്ടറി സാമർത്ഥ്യത്തോടുകൂടി മറുപടി പറഞ്ഞതുപോലെ സാധാരണക്കാർക്കു പറയുവാൻ സാധിക്കുന്നതല്ല. പ്രത്യേകിച്ചു എനിക്കു ദേഹത്തിനു നല്ല സുഖമില്ലാത്തതുകൊണ്ട് ഞാൻ അധികം സംസാരിക്കണമെന്നു വിചാരിക്കുന്നില്ല. ഏതു വിധത്തിലായാലും എന്റെ ഉദ്ദേശം മിച്ചവാരത്തിന്റെ വ്യാഖ്യാനം കുടിയാന്മാർക്ക് അനുകൂലമായ തരത്തിൽ ഭേദഗതി ചെയ്യണമെന്നുള്ളതാണ്. അതുകൊണ്ട് ഈ ഭേദഗതിയെ ഈ സഭയിലെ എല്ലാ അംഗങ്ങളും സ്വീകരിക്കണമെന്നപേക്ഷിക്കുകയും, എല്ലാവരും യോജിക്കുന്നപക്ഷം വോട്ടുചെയ്യണമെന്നു അഭ്യർത്ഥിക്കുകയും ചെയ്യുന്നു. ഇതിൽ കൂടുതലായി എനിക്കൊന്നും പറയുവാനില്ല.

Motion put and carried

Panel Chairman: The question before the House is that clause 2 stands part of the Bill.

Mr. T. P. Poulose *(Kanayannur):* Sir, my amendment reads thus.—*Add the words "including appeals" after the word "suits" in clause 2. Omit all the words in the clause beginning from "and execution proceedings".* If amended, clause 2 will read like this: "It shall come into force at once and shall apply to all pending suits including appeals". According to the Bill as amended by the Select Committee it applies to execution proceedings, so far as the operation of section 28 of the Tenancy Act of 1113 is concerned. I for my part do not consider it justifiable to reopen decrees already passed by Court. Once a suit is filed for renewal fees and once the court passes the decree it will be unreasonable and unjustified to make the court reopen the decree already passed. The ordinary

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function of an executing court is to execute the decree as it is. It is only in extraordinary cases where serious hardships would otherwise be caused that a legislature would be justified in enacting that a decree once passed can be reopened. Apart from this aspect, I do not consider that even if these words remain in the clause they would have any effect. What is stated here is that the Bill shall apply to "all pending suits and execution proceedings so far as the operation of section 28 of Act XV of 1113 is concerned." I would ask those who are responsible for this amendment, how any question would arise in execution proceedings about the operation of section 28. The executing court only executes the decree but does not consider the question whether it is for renewal fee or what the rate of renewal fee should be. Unless there is corresponding provision for reopening of decrees, this provision will be useless. Even if this provision remains in the Bill it will be an innocuous provision. There is no justification for a meaningless provision to remain in an enactment. Therefore, I submit that these words should be omitted. I have added the words "including appeals" to make it clear that suits include appeals also. Even if these words are not inserted, the word "suits" by itself may include appeals. But, there have been cases where controversies have arisen whether "suits" include appeals. To make the matter clear I am suggesting the amendment that the words "including appeals" may be added. In this connection, I may draw the attention of the House to the Tenancy Amendment Bill passed by this House in last Makaram—or may be in Vrischigam—wherein the very same language is used: "This Act shall apply to all pending suits including appeals." I commend the amendment for the acceptance of the House.

Mr. M. K. Devassy *(Adur):* I second it.

Mr. K. Achyuta Menon *(Secretary to Government):* We have opposed the principle of the Bill. We cannot accept the amendment to an objectionable matter.

Mr. C. V. Iyyu *(Kunnamkulam):* I accept the amendment.

Clause 2 as amended, put and carried.

Panel Chairman: The question before the House is that clause 3 stands part of the Bill.

Mr. T. P. Poulose *(Kanayannur):* I move the following amendment to clause 3: "*Substitute the following for clause 3.—"Add after section 2(g) of the Cochin Tenancy Act, XV of 1113, the following as a separate paragraph.—" Explanation.—Michavaram does not include Government tax payable by the tenant to the Government or to the landlord*". This amendment is only a verbal

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amendment to the clause drafted by the select committee. The select committee defines *michavaram* thus.—"*Michavaram* means whatever is agreed by a *kanam* tenant in a *kanam* deed to be paid periodically in money or in kind or in both to or on behalf of the landlord". This definition is defective. In the first place, it does not make a distinction between *michavaram* and *puravaka* dues. In the Act of 1113 *puravaka* dues is defined separately. I do not find anything erroneous in the general wording of the definition of *michavaram* in the existing Act. The only thing that has to be made clear is that it does not include Sirkar tax. Unless alteration in the existing language is absolutely necessary we will not be justified in making changes. What we want to make clear is that *michavaram* does not include tax. For that, I suggest an explanation may be added to the definition in the existing Act. The select committee has given an explanation. I thought that their wording was not very happy. Hence, I have proposed the amendment. I would request the Advocate-General, the Secretary and the Diwan Peishkar who are eminent lawyers to help us so far as the drafting is concerned, though they are opposed to the Bill itself.

Mr. M. Sivarama Menon *(Advocate-General):* Personally I think the drafting is correct.

Mr. T. P. Poulose *(Kanayannur):* If this attitude of co-operation was shown by the Government members on the select committee there could not have been any difficulty to correct the mistakes in drafting. This Bill was referred to a select committee consisting of Government members who are eminent lawyers. Unfortunately, they took an attitude of hostility to this Bill. But that attitude was no justification for them not to have helped the correct drafting of the Bill. If they had done so, no amendment would have been necessary at this stage.

Mr. M. K. Devassy *(Adur):* I second the amendment.

Mr. A. V. Moothedan *(Chalakkudi):* So far as the select committee report is concerned, the definition of "*michavaram*" is alright, but the words "to the Government" are not necessary.

Panel Chairman: The explanation in the select committee report is defective because it refers to *michavaram* in this section. Again the trouble will come whether the *michavaram* under section 28 will be different.

Mr. T. P. Poulose *(Kanayannur):* The words "Government-tax" which I have adopted in the amendment is the word used in other sections of the Act. When we use a word it must be the word used in other sections. Otherwise there will be difficulties, if you define one word and use other words. The word used in the

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following sections is "Government-tax". So, that expression should be used in the definition.

Amendment put and carried

Clause 3 as amended put and carried

Clause 1, Title and Preamble put and carried

Mr. C. V. Iyyu *(Kunnamkulam):* I move that the Bill may be taken up and finally passed to-morrow.

Mr. K. R. Viswambharan *(Ezhuvas-Talappalli):* I second it.

Motion put and carried

The Cochin Hindu Law of Inheritance (Amendment) Bill

Mr. T. V. Subramania Ayyar *(Nemmara):* Sir, I move that the Cochin Hindu Law of Inheritance (Amendment) Bill be read in Council. I have nothing more to add except what is stated in the statement of objects and reasons.—"Under the Mitakshara School of Hindu Law, (1) the son's daughter, (2) daughter's daughter, (3) sister and (4) sister's son of a deceased male are classified as Bandhus and they inherit his property only after Sapindas and Samanodakas. The Sapinda relationship extends to seven degrees reckoned from and inclusive of the deceased. The Samanodakas of a person include all his agnates from the 8th to the 14th degree and even beyond the 14th degree, if the agnatic relationship be clearly established. It will thus be seen that the persons enumerated as (1), (2), (3) and (4) though closely related to a Hindu male, can inherit his property only after a very large horde of distant relatives are exhausted. In other words, very distant and unknown persons related to the deceased in a remote degree are preferred to those who are nearer and dearer to the deceased. This anomaly has been the subject of severe criticism from great Hindu Law Lawyers. This system is not in keeping with the current Hindu public opinion either. The necessity for a change in this order of inheritance was recognised in British India and by the passing of the Hindu Law of Inheritance (Amendment) Act, 1929, the persons enumerated above as (1), (2), (3) and (4) have been assigned places after Father's Father (of the deceased) and before Father's brother (of the deceased) in the order of succession. The present Bill aims at the same change in the order of succession and is on the same lines of the Hindu Law of Inheritance (Amendment) Act, 1929, now in force in British India". I have nothing more to say except this, that as the Hindu Law stands at present in Cochin very remote relations are preferred in the matter of succession to very near and dear relations like a son's daughter, a daughter's daughter, a sister and sister's son. Current opinion in the Hindu community is that this anomaly should be done away with and nearer relations must be preferred to distant and unheard of relatives. It is with a view to do this that this Bill is introduced. Care has been taken in order to exempt special families or local customs having the force of law, and to preserve the rule of premoginature wherever it exists in the State. I am not aware of any particular case like that; but in order to

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